



UTAH SCHOOL LAW UPDATE

Utah State Office of
Education

June 2010

Inside this issue:

PREPARING FOR GUESTS

Guest speakers in classrooms may provide exciting and interesting lessons for students. In some instances, however, a guest speaker's comments may cause concern.

Guest speakers are in the classroom at the teacher's/school's invitation. They have no RIGHT to present in public school classrooms and they must follow the same rules that the teacher would be bound to follow. Every teacher who invites a guest presenter should have at least a brief discussion with the presenter about the presenter's teaching style and the learning style and intellectual level of the students.

Many presenters pose few problems—veterans in social studies classes or rocket scientists or perhaps guest musicians or artists. Other areas are more sensitive—health or “maturation” presenters, psychologists, guest speakers about world religions or other cultures.

In general, the following guidelines should be followed with guest speakers:

* Presenters should be familiar with state FERPA. Speakers should be provided a copy (or summary) of Utah Code § 53A-13-301 and

302. Teachers should explain that the speakers need to be careful how they ask students about family relationships, religion, politics, sexual behavior or orientation, mental or psychological problems. For instance, a speaker (just like a teacher) could ask of students, “How many of you know what “narcissism” is?” But not, “Are any of you bipolar?”

* Speakers are held to the same standards as teachers, including the requirement for prior, written parental consent, in discussing health education and sex education related issues. The applicable section of Utah law is 53A-13-101. Speakers should let teachers help them review and field spontaneous questions on these issues. Speakers should avoid anonymous questions or “question boxes.”

* Speakers must respect students' and families' privacy rights generally. They should understand that they cannot go back into their neighborhoods and talk casually about the discipline problems in a class or the number of special education students in the class, etc.

* Speakers should understand that if they ask an open-ended question or give an open-ended assignment, students have the right to express themselves.

For instance, if a speaker asks a 10th grade student to name and briefly describe an important historical figure, a student may say “Joseph Smith.” Or he may say “Charles Manson.” The student cannot be cut off, but neither can the student be allowed to continue with his “testimony” of Joseph Smith or the history of Charles Manson in a history class.

Similarly, an elementary student may say that her favorite book is “I have Two Mommies,” and she should not be corrected or cut off.

And none of the students in the above examples should be provided with an explanation as to why their choice is acceptable or unacceptable to the speaker.

Speakers have some responsibility to keep the discussion within the course curriculum and objectives, without trampling student rights in the process.

UPPAC Case of the Month	2
Eye on Legislation	2
Recent Education Cases	3
Your Questions	3



UPPAC CASES

The Utah State Board of Education suspended Travis Lloyd McAllister's educator license for accessing inappropriate websites using school computer equipment.

The State Board suspended Vardell R. Reese's educator license based on his past arrest for sex solicitation and subsequent plea in abeyance.

Eye on Legislation

Summer is upon us, and it is time for all members of the Utah State House of Representatives and half of Utah's State Senators to gear up for re-election. As the campaign season begins, a few proposals for public education have sprouted:

Some Tea Party candidates/sympathizers have cautiously begun to mention vouchers again. Though the Tea Party enjoys a following in Utah, no recent polls have been done to suggest public opinion of vouchers has changed since the 2007 defeat of such a program.

One Utah State School Board nominee suggested he would like to stop providing education to illegal immigrants. While the U.S. Supreme Court has made it abundantly clear that schools must provide education services to all

children, regardless of immigration status, this idea may also catch on with Tea Party candidates, and was apparently not wacky enough to disqualify the potential candidate as a nominee for the Board.

Speaking of the State Board, the elimination of yet another highly-qualified incumbent in favor of a candidate with fewer qualifications again raises questions about the legitimacy of the State Board candidate selection process. Whether legislators will attempt to return to direct elections of school board members remains to be seen.

Finally, some legislators are still agitating over Utah High School Activities Association rules and procedures. At least one has floated the idea of eliminating all rules for athletic participation, allowing schools to recruit athletes without limitation, among other things.

REMINDER:



The Utah School Law Update will be on vacation in July. Please watch for the next edition in August.

UPPAC Case of the Month

Many educators are also parents of students who attend their schools. Those students, presumably, have friends who are also students in the schools. These friendships can complicate the educator's professional life, particularly when the students/friends want to have sleepovers or other events at the educator/parent's house.

The State Board of Education has suspended or revoked the licenses of educators based on their actions while students were at their homes as the guests of the educators' children.

But before panic sets in, let's review the circumstances that led to such drastic measures.

In one instance, the educator knowingly allowed underage students to drink alcohol at her home. Such activity is a crime and the educator's license was

suspended based on her abysmal judgment and failure to protect students from obvious harm.

In another instance, the educator was convicted of molesting a student during a sleepover at his home. Criminal activity by educators against students will result in licensing sanctions.

The children of educators are allowed to have friends and to have those friends over to play. Educators, however, must remember that they are always educators, even in their own homes. The educator is expected to maintain professional boundaries with their children's guests and refrain from engaging in any behavior that would reflect poorly on them in the classroom.

Clearly, committing criminal acts falls within this category. But educators should also avoid conduct that may not be criminal but would also not be appropriate at school,

such as giving the student/guest a back rub or bear hug, kissing the student/guest on the cheek (or anywhere else), or being alone with the student in an enclosed place, such as a room with the door closed or the car (take your child with you if you need to drive the student/guest home).

Educators should avoid situations that may create feelings of favoritism toward students who are also the friends of the educator's child, or raise an appearance of impropriety. Sleepovers, for example, may lead to allegations of impropriety and should be avoided at the educators home. Similarly, educators should not "friend" their child's friends on social networking sites.

Common sense precautions and adherence to professional standards should protect an educator from any claims of inappropriate activity with a student.

Recent Education Cases

J.C. v. Beverly Hills Unified School Dist. (Cal D.Ct. 2010). The Beverly Hills Unified School District (BHUSD) violated a student's First Amendment rights when it disciplined her for a posting on YouTube.

The student, J.C., and several others met at a restaurant after school. The student recorded a four minute and thirty-six second video of her friends talking about a classmate. The students referred to the classmate as a "slut," "ugly," and "spoiled." The students also used profanity and discussed "boners." J.C. is also heard encouraging her friends to talk about the classmate.

That night, J.C. posted the video to YouTube from her home computer. She then called 5-10 students and told them to watch the video. J.C. also informed the student who was the subject of the conversation. The student told J.C. the video was mean and J.C. offered to remove it. At the advice of her mother, the student told J.C. to keep the video on YouTube. Mom wanted the video online so she could show it to the school.

At school the next day, 10 students discussed the video. The student who was the subject of the video was upset and spent 45 min-

utes talking to her counselor because she did not want to go to class. The student missed a portion of one class for the day.

The school investigated the video, talked to the district (which consulted attorneys) and decided to suspend J.C. for two days.

J.C. sued for violations of her First Amendment rights.

The court first analyzed J.C.'s argument that the speech was protected because it occurred off campus. The court dispatched of this argument after a review of U.S. Supreme Court and circuit court precedents.

The court then looked at whether the speech created a "substantial disruption" at school, as required in order to impose discipline on a student for off-campus speech.

The court first noted that violent or threatening speech may be enough to satisfy the substantial disruption requirement. The speech in this instance, however, was not violent or threatening.

The court then noted that another factor to consider is whether administrators are pulled away from their ordinary tasks to mitigate the effects of a student's speech—such as answering a flurry of parent phone calls, or dealing with student's walk-

ing out of class. That was not the case here.

Finally, the court considered whether the decision to discipline was based on evidence of a foreseeable risk of disruption, or a mere dislike of the speech. The court found that addressing the concerns of a student who temporarily refused to go to class was not a substantial disruption of their normal activities.

The court also found no grounds to fear physical harm to the student based on the video. Though the student was embarrassed and her feelings were hurt, that was not a basis for suspending J.C.

Further, the court could find no evidence that the video sparked a widespread whispering campaign. While J.C. noted that 10 students talked about the video at school, there was no evidence of students mocking the subject of the video.

Finally, the court could find no evidence to suggest a substantial disruption was reasonably likely. In the words of the court, "the school's fear that thirteen year-old students might pass notes in class and worry about their reputation in school" is not evidence of a possible substantial disruption.

Your Questions

Q: May a school segregate its physical education classes based on gender?

A: Yes, provided the separation is based on objective standards of individual performance without regard to sex or if the activities involve bodily contact.

Under this standard, choir classes can be segregated between the sexes based on vocal ranges or qualities. A physical education class can be separated if the major activity of the class involved

What do you do when. . . ?

bodily contact—such as playing basketball, lacrosse, etc. You can also separate based on objective criteria, such as ability to bench press a certain amount of weight, complete a number of pull-ups, throwing distance, etc.

You can also separate the sexes when discussing human sexuality.

Q: If a school board member is constantly staring at me, pats my shoulder, and visits my school excessively, is it sexual harassment?

A: Probably not. To be sexual harassment, the conduct must be severe, pervasive, or objectively offensive and sexual in nature.

Visiting the school is not sexual conduct. Unless the visits include inappropriate sexual conversations with the board mem-

Utah State Office of Education

250 East 500 South
P.O. Box 144200
Salt Lake City, Utah 84114-
4200

Phone: 801-538-7830

Fax: 801-538-7768

Email:

jean.hill@schools.utah.gov

We're on the web
schools.utah.gov



The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

(Continued from page 3)

ber, the visits alone are not sexual.

Staring, though perhaps sexually motivated, is probably not severe or objectively offensive in and of itself. Staring combined, again, with sexual comments or inappropriate touching might rise to the level of sexual harassment if pervasive or the inappropriate touch is "severe"—a touch that could lead to a criminal charge, for example.

Similarly, a pat on a shoulder is considered an acceptable form of touch in school settings. However, a pat combined with an inappropriate sexual proposition might be sexual harassment, as might a pat that is somewhat lower on the body.

Q: If a graduating senior has not paid all outstanding fees,

can we withhold her yearbook or diploma?

A: No, if the yearbook has been paid for and the diploma earned. Nowhere in state law or board rule are students required to pay fees as part of their high school credits for graduation. If a student has earned all of the credits necessary for graduation, the student is entitled to receive the diploma, though perhaps not in the graduation ceremony.

Similarly, if the student has paid for the yearbook, the student must be provided with the yearbook.

Unpaid fees can be collected by sending the parent to a collection agency, refusing to allow the student to walk in the graduation ceremony until the fees are paid, or offering to

allow the student and/or parents to work at the school during the final weeks of school or over the summer to work off the fees.

Q: If a student is on fee waivers and can't afford a graduation gown, must we provide a gown?

A: While you would not be required to provide the gown, the school should do so if a student

can't afford it and is otherwise eligible to participate in graduation.

The graduation ceremony is an important moment for students. Courts do not look kindly on schools that

deprive students of that experience for reasons other than a disciplinary necessity—i.e., the student threatened to disrupt the ceremony.

